

ESTTA Tracking number: **ESTTA660773**

Filing date: **03/12/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91216725
Party	Defendant Godswill H. Oletu DBA Zenithmart
Correspondence Address	GODSWILL H OLETU 370 W PLEASANTVIEW AVE STE 2-120 HACKENSACK, NJ 07601-8004 UNITED STATES oletu@oletu.com, ogodswill@yahoo.com, trademark@zenithmart.com
Submission	Opposition/Response to Motion
Filer's Name	Godswill Oletu
Filer's e-mail	oletu@oletu.com
Signature	/1gho2kome3/
Date	03/12/2015
Attachments	Response In Opposition To Motion To Extend Time.pdf(1072906 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application Serial  
No. 86067598 Published in the Official Gazette  
April 8, 2014.

ZENITH-MART INC.,

Opposer,

v.

OLETU, GODSWILL H.

Applicant.

Opposition No. 91216725

Mark: ZENITHMART

**RESPONSE IN OPPOSITION TO MOTION TO EXTEND TIME**

Applicant, Oletu, Godswill H. a Sole propriety ("Applicant"), hereby files this Response in Opposition to Opposer's (Zenith-Mart Inc) Motion; Requesting An Extension of 60 Days Time Period (commencing from March 9, 2015) To Hire And Retain A Representing Attorney. The reason given in Opposer's motion for the extension is to *"...give Opposer the time to meet it financial obligation to be able to hire and retain the services of an Attorney to represent Opposer in the Opposition."*

**BACKGROUND**

Counsel for Opposer filed a Motion to withdraw from representing Opposer on this Matter on January 13, 2015. And in convincing the board to allow him to withdraw, Counsel for Opposer stipulated to facts contained in items 1, 2 and 3 below and his motion was not contradicted or opposed by the Opposer (*see also EXHIBIT 1*):

1. "Pursuant to 37 CFR §§11.116(5)(b), Counsel states that the client has failed substantially to fulfill an obligation to Counsel regarding Counsel's services and has been given reasonable warning that Counsel will withdraw unless the obligation is fulfilled"
2. "Counsel has notified Opposer of Counsel's intention to withdraw from representation, and has allowed time for Opposer to hire another practitioner if desired."
3. "This request to withdraw from representation is not a subterfuge to obtain an extension or reopening of time to which Opposer would not be otherwise entitle"
4. On January 21, 2015 in a Telephone conversation with Opposer's prior Counsel, He pleaded, that Applicant consent to extension of the remaining time to allow his client additional time and Applicant obliged and the remaining time were extended with consent.
5. On November 6, 2014; Applicant received yet another intimidation, bullying and harassment letter (*Attached below as EXHIBIT 2*) from Jura Zibas, Esq an Attorney from Wilson Elser in New York City hired by Opposer. See my response to that email below (*EXHIBIT 3*). Applicant advised and stirred the new Counsel towards the current Board proceedings and the need to focus and join whatever new pleadings or accusations they may have thereto.
6. On January 23, 2015; Applicant received yet another intimidation, bullying and harassment email that borders on slander and libel (*Attached below as EXHIBIT 4*) from Opposer, where Opposer stated "...I saw your discovery and you think I don't have everything you requested? I have all of them and *once my new attorneys are ready and putting everything*

***together, you will regret ever infringing on my trademark....". See Applicant's response in EXHIBIT 5.***

## **ARGUMENT**

According to Fed. R. Civ. P. 6(b), TBMP § 509 and 37 CFR § 2.116(a); In Generally, the Board is liberal in granting extensions of time before the period to act has elapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. The moving party, however must set forth with particularity the facts said to constitute good cause for the requested extension; mere conclusory allegations lacking in factual detail are not sufficient....Moreover, a party moving to extend time must demonstrate that the requested extension of time is not necessitated by the party's own lack of diligent in meeting its responsibilities or unreasonable delay in taking the required action during the time previously allotted therefor. The board will 'scrutinize carefully' any motion to extend time, to determine whether the requisite good cause has been shown.

Applicant therefore move the Board to denied the Opposer's Motion to Extend Time for the following reasons:

### **1. GOOD CAUSE FOR EXTENSION NOT SHOWN.**

Here, the reason given for the requested extension of time by the Opposer, is to ***"...give Opposer the time to meet it financial obligation to be able to hire and retain the services of an Attorney to represent Opposer in the Opposition."*** Opposer took the option to seek legal representation when he does not have the financial wherewithal to sustain such a decision,

instead of the option to represent himself. The Opposer have shown that, he is not ready to retain Counsel and he is not looking for one currently. The Opposer merely need time to obtain some finances before, he can be ready or prepare to retain an attorney. This shows that, the Opposer is not prepared to prosecute this case. The Board is tasked with deciding the registrability of trademarks and should not be drawn into the parties' legal finances. The Board should not consider financial availability or the lacks thereof as '*good cause shown*' to extend time or delay proceedings, especially when the party seeking such extension clearly have the option to represent themselves; plus the delay occasioned is self-inflicted as in this case by the party seeking the extension of time.

**2. REQUESTED EXTENSION OF TIME IS NECESSITATED BY OPPOSER'S LACK OF DILIGENCY AND AS A RESULT OF BAD FAITH.**

When Opposer made the decision not to represent himself despite his finances, He knew or should have known that, he needed finances to prosecute this case and would have prepared for that in advance and Opposer's lack of preparation and lack of diligence in meeting his responsibilities, should not constitute a delay in this case. Given the Opposer's history of not meeting his legal financial obligations and responsibilities towards legal counsels, his motion lacks particularity on how this self-inflicted delay can be avoided in the future.

On or before November 6, 2014; while still owing his then current Counsel of record and despite reasonable demand for payment and warnings that his Counsel will withdraw from the case, if Counsel fees are not paid. Opposer made a conscious decision to retain another Counsel (*see EXHIBIT 2*) in order to send harassing letter to the Applicant with a bid to intimidate the Applicant to withdraw his Trademark application. The Opposer's by his actions, fired his

previous Counsel *without good cause* and should not therefore be granted additional time to obtain finances to retain another Counsel.

Further, As late as January 23, 2015; while Opposer then Counsel's Motion to withdraw because of Opposer's inability to meet his financial obligation is still pending before the Board; Opposer had the services of another Counsel and based on Opposer's own email, he stated that..." *once my new attorneys are ready and putting everything together, you will regret ever infringing on my trademark....*".(See **EXHIBIT 4**). And based on this record, Opposer had retained this Counsel at least; as early as November 6, 2014; when this same Counsel sent the Applicant an intimidating letter (See **EXHIBIT 2**). This record and Opposer's action is clearly in contradiction to his current Motion that, he needs time to retain a Counsel.

Opposer's actions by engaging in numerous harassments and also through new Counsel, while still owing and refusing to meet his financial obligation toward then current Counsel, which then necessitated this delay, is calculative and constitute bad faith and the additional time been sort therein, is merely to further this pattern of harassments and should be frown upon by the Board. More so, Opposer's actions and the reason given in his motion in seeking an enlargement of time are not credible and inconsistent with his pronouncements and actions evident in **EXHIBITS 2 & 4** as indicated above. At the most Opposer Motion and reasons are false and misleading or at the least, in totality with his actions, they constitute bad faith.

Even if Opposer's position are credible and consistent with his Motion, Opposer failed to provide details to the Board in his current Motion for an enlargement time, why the Counsel referenced in **Exhibits 2 & 4**, cannot file to represent him in this proceeding. And if Opposer's goal is to restrict the Counsel reference in **Exhibits 2 & 4**, to some future or parallel Federal

Court filings, It then means Opposer have the financial wherewithal to retain Counsel and that defeats Opposer's alleged reason for seeking an enlargement of time.

**3. REQUESTED EXTENSION OF TIME IS DUE TO UNREASONABLE DELAY IN TAKING THE REQUIRED ACTION DURING THE TIME PREVIOUSLY ALLOTTED.**

When Opposer failed to meet his financial responsibilities towards his prior Counsel, he knew or should have known that his Counsel will withdraw from representing him. His prior Counsel gave him reasonable warnings about this eventual outcome.

Well before January 13, 2015; when his prior Attorney filed to withdraw from the case, Oppose knew that he will be needing a new Counsel, should he elect to continue with counsel representation. Opposer's Motion to extend time, did not indicate how he used the time given by his previous Counsel to look for a new counsel. On February 6, 2015 when the Board granted the request to Withdraw, the Board gave the Opposer till March 8, 2015 (additional time) to retain a new Counsel, should he choose to continue with Counsel representation or file paper to represent himself. Opposer's motion to extend time, did not indicate how these previously allotted times were utilized in seeking a new Counsel. Rather, Opposer merely waited and delayed until the final day ordered by the Board to either appoint a new Counsel or to file paper, stating that Opposer chooses to represent itself, before filing his motion to extend time for him to seek finances to retain another Counsel. In *Leumme, Inc v. D.B. Plus Inc.*, 53 USPQ2d 1758, 1760 (TTAB 1999); Motion to extend discovery time was denied, when a party does serve written discovery requests until the final day of discovery and did not attempt to depose its adversary during the prescribed discovery period. Here as in the above case, Opposer failed to perform the

requested Action within the prescribed period and waited until the final day before requesting for an extension for financial reasons.

Therefore, Opposer's current situation, was clearly anticipated, were calculative, self-inflicted by Opposer himself and would have easily been cured by Opposer himself, within the time allotted in the Board's Order. This delay is occasioned by Opposer's own choices and options taken and it is completely within opposer's own control and as such does not meet the good cause standard for granting an extension of time.

#### **4. REQUESTED EXTENSION IS PREJUDICE TO APPLICANT AND IT IS SUBTERFUGE FOR DELAY**

Opposer's Motion and actions are prima facie evidences, that he is not ready or prepare to prosecute this case or seek a ruling that will be based on the merits. Meanwhile, Applicant's Trademark registration has been unduly held up by Opposer's Opposition. The inability of Applicant to fully utilize or benefit from his Trademark registration is causing undue and unreasonable hardship and monetary lost to Applicant. The Applicant has also put on hold many opportunities due to the uncertainties of a court case.

It is therefore unfair for the Applicant to be further punished, by delays attributed to Opposer's unpreparedness, inactions, deliberate actions/decisions, lack of diligence and inability to meet his responsibilities. All of which, were of Opposer's own making and within Opposer's own control.

Further, having granted Opposer's prior Counsel the leave to withdraw with the promise that, his withdrawal request is not a "*subterfuge to obtain an extension or reopening of time to which Opposer would not be otherwise entitle.*" due to actions that were solely caused by Response In Opposition To Motion To Extend Time: 03122015.7



Opposer, in that he refused to meet his financial responsibilities and obligations towards his prior Counsel (*see EXHIBIT 1*). It will be a miscarriage of justice to now grant the Opposer further delays and enlargement of time in order for him; *not to retain a new counsel, but to seek finances, that will enable him to one day retain a new counsel*; when Opposer have other viable options to continue this proceeding, without delay, but has refused to take them.

Applicant, therefore pray that Opposer's motion be denied in their entirety and that Opposer be found in default. If however, In it's discretion, the Board wishes to grant Opposer's motion; Applicant pray that, the Board should limit the length of time so granted and also to bar or limit Opposer from further delaying this proceeding in the future with request(s) of these nature.

Dated this 12th day of March, 2015.

Respectfully Submitted,

Signed: /lgho2kome3/  
Oletu, Godswill H. (Applicant, pro-se)  
/d/b/a Zenithmart  
370 W. Pleasantview Avenue, STE#2-120  
Hackensack NJ 07054.

### **CERTIFICATE OF FILING**

The undersigned hereby certifies that a copy of this RESPONSE IN OPPOSITION TO MOTION TO EXTEND TIME, was filed electronically through the TTAB's ESTTA (Electronic System for Trademark Trials and Appeals) system on March 12, 2015.

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 12th day of March, 2015, a true and complete copy of the foregoing RESPONSE IN OPPOSITION TO MOTION TO EXTEND TIME was served upon Applicant of record by <sup>1</sup>email and first class mail, postage prepaid and addressed to:

1. Tochukwu Mbiamnozie  
Zenith-Mart, Inc  
30 Wall Street Floor 8  
New York, NY 10005  
United State of America.
2. Email: info@zenithmart.us

Signed:           /1gho2kome3/            
Oletu, Godswill H. (Applicant, pro-se.)  
/d/b/a Zenithmart  
370W.Pleasantview Avenue, STE#2-120  
Hackensack NJ 07054.

<sup>1</sup>Opposer does not have an attorney of record, also the parties stipulated to service by email, as contained on the Board's order of August 15, 2015; but Opposer does not have any email on record with the TTAB, however; Applicant effected serviced upon Opposer, by using Opposer's email address in the Trademark Status & Document Retrieval (TSDR.) and also mailed a courtesy copy via USPS first class mail postage prepaid.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application Serial  
No. 86067598 Published in the Official Gazette  
April 8, 2014.

ZENITH-MART INC.,

Opposer,

v.

OLETU, GODSWILL H.

Applicant.

Opposition No. 91216725

Mark: ZENITHMART

**DECLARATION OF APPLICANT IN SUPPORT OF  
RESPONSE IN OPPOSITION TO MOTION TO EXTEND TIME**

1. I am Mr. Godswill Oletu and I am the Applicant in this proceeding and I am the Sole propriety and owner of Zenithmart.
2. I am fully familiar with the business records of Zenithmart and its use of the mark 'Zenithmart'. I made this declaration on the basis of my own personal knowledge and in support of my Response in Opposition to the Motion to Extend Time for Opposer.

**Exhibit 1 - Opposer's Prior Attorney Motion to Withdraw**

3. Attached hereto as EXHIBIT 1 is a true and correct copy of the Motion filed by Opposer's previous Attorney to withdraw from representation. Part of the reason given for this withdraw is that Opposer *"...has failed substantially to fulfill an obligation to Counsel regarding Counsels' services and has been given reasonable warning that Counsel will withdraw unless the obligation is*

*fulfilled...Counsel has notified Opposer of Counsel's intention to withdraw from representation, and has allowed time for Opposer to hire another practitioner if desired."*

**<sup>2</sup>Exhibit 2 - Jura Zibas Letter - Opposer Second Attorney.**

4. Attached hereto as EXHIBIT 2 is a true and correct copy of the letter that Applicant received on November 7, 2014 from Opposer's Attorney.

**<sup>2</sup>Exhibit 3 - Applicant's Response To Jura Zibas Letter**

5. Attached hereto as EXHIBIT 3 is a true and correct copy of Applicant's Response to Jura Zibas' Letter posted by Applicant via USPS on November 24, 2014.

**<sup>2</sup>Exhibit 4 - Opposer Email To Applicant**

6. Attached hereto as EXHIBIT 4 is a true and correct copy of Opposer Email to Applicant on January 23, 2015, indicating that he has the services of a Counsel. Those statement are in contradiction with his position on this motion.

**<sup>2</sup>Exhibit 5 - Applicant's Response To Opposer's Email**

7. Attached hereto as EXHIBIT 5 is a true and correct copy of Applicant's Response to Opposer's email on January 24, 2015.

I declare under the penalty of perjury, under the laws of the United States of America that, the foregoing is true and correct.

Executed this 12th day of March, 2015 at Parsippany, New Jersey.

Respectfully Submitted,

Signed: /1gho2kome3/  
Oletu, Godswill H. (Applicant, pro-se)  
/d/b/a Zenithmart  
370 W. Pleasantview Avenue, STE#2-120  
Hackensack NJ 07054.

<sup>2</sup>Exhibits 2 to 5 referred to many additional attachments and Exhibits, Applicant did not include them hereto in order not to make the filing any more voluminous. More so, they are not germane to this motion, since the only reason for Applicant's inclusion hereto is to demonstrate Opposer's actions and lack of diligence.

Response In Opposition To Motion To Extend Time: 03122015.12

EXHIBIT 1

page 1 of 4

Trademark Trial and Appeal Board Electronic Filing System. <http://esta.uspto.gov>

ESTTA Tracking number: **ESTTA649782**

Filing date: **01/13/2015**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<b>Proceeding</b>	91216725
<b>Party</b>	Plaintiff Zenith-Mart Inc.
<b>Correspondence Address</b>	ADAM S WEISS POLSINELLI PC 161 N CLARK STREET, SUITE 4200 CHICAGO, IL 60601-3316 UNITED STATES aweiss@polsinelli.com, kesullivan@polsinelli.com, uspt@polsinelli.com
<b>Submission</b>	Request to Withdraw as Attorney
<b>Filer's Name</b>	Adam S. Weiss
<b>Filer's e-mail</b>	aweiss@polsinelli.com, uspt@polsinelli.com, scason@polsinelli.com, tvan-buskirk@polsinelli.com
<b>Signature</b>	/Adam S. Weiss/
<b>Date</b>	01/13/2015
<b>Attachments</b>	Withdrawal as Counsel -- Zenith-Mart Inc.pdf(11993 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ZENITH-MART INC.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition: 91216725
	)	
GODSWILL H. OLETU DBA ZENITHMART,	)	
	)	
Applicant.	)	

**NOTICE OF MOTION REQUESTING PERMISSION TO WITHDRAW AS  
COUNSEL OF RECORD FOR OPPOSER ZENITH-MART, INC.**

Pursuant to Trademark Rule 2.19(b), Counsel for Opposer Zenith-Mart, Inc. hereby files this Notice of Motion Requesting Permission to Withdraw as Counsel of Record for Opposer Zenith-Mart, Inc. ("Opposer"), showing the Board as follows:

1. Counsel for Opposer, Adam S. Weiss, Tedd W. Van Buskirk, Karin E. Sullivan<sup>1</sup> and the law firm of Polsinelli PC, desire to withdraw from representation of the Opposer in the matter of Opposition No. 91216725, filed on June 6, 2014 (the "Opposition") against the trademark ZENITHMART.

2. The request to withdraw is based on 37 CFR §§ 11.116(b)(1) and (b)(5). Pursuant to 37 CFR §§ 11.116(b)(1), Counsel states that withdrawal can be accomplished without material adverse effect on the interests of the client. Here, Opposer's Pretrial Disclosures are not due until March 28, 2015 and its 30-Day Trial Period does not end until May 12, 2015, which provides enough time such that the interests of the Opposer will not be materially adversely affected. Further, pursuant to 37 CFR §§ 11.116(b)(5), Counsel states that the client has failed substantially to fulfill an obligation to Counsel

---

<sup>1</sup> Karin E. Sullivan is no longer an attorney at Polsinelli PC.

regarding Counsel's services and has been given reasonable warning that Counsel will withdraw unless the obligation is fulfilled.

3. Counsel has notified Opposer of Counsel's intention to withdraw from representation, and has allowed time for Opposer to hire another practitioner if desired. Here, Opposer's Pretrial Disclosures are not due until March 28, 2015, and its 30-Day Trial Period does not end until May 12, 2015, which provides for enough time for Opposer to hire another practitioner.

4. All papers and property that relate to the Opposition and to which the Opposer is entitled have been delivered to the Opposer.

5. There is no part of the fee paid that has not been earned.

6. Attached is proof of service of the request to withdraw upon the Opposer and all other parties to the Opposition.

7. This request to withdraw from representation is not a subterfuge to obtain an extension or reopening of time to which Opposer would not be otherwise entitled.

/s/ \_\_\_\_\_  
Adam S. Weiss  
Tedd W. Van Buskirk  
Polsinelli PC  
161 N. Clark Street, Suite 4200  
Chicago, IL 60601-3316  
T: (312) 873-3644



**CERTIFICATE OF FILING**

I hereby certify that a copy of this NOTICE OF MOTION REQUESTING PERMISSION TO WITHDRAW AS COUNSEL OF RECORD FOR OPPOSER ZENITH-MART, INC. was filed electronically through the TTAB's ESTTA (Electronic System for Trademark Trials and Appeals) system, on January 13, 2015.

/s/ \_\_\_\_\_  
Adam S. Weiss  
Tedd W. Van Buskirk  
Polsinelli PC  
161 N. Clark Street, Suite 4200  
Chicago, IL 60601-3316  
T: (312) 873-3644

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the attached NOTICE OF MOTION REQUESTING PERMISSION TO WITHDRAW AS COUNSEL OF RECORD FOR OPPOSER ZENITH-MART, INC has been served upon Applicant and Opposer by first class mail, postage prepaid, on January 13, 2015, addressed to the following (Applicant does not have an attorney of record):

Zenith-Mark, Inc.  
30 Wall St, 8th Floor  
New York, NY 10005  
*Opposer*

Godswill H. Oletu  
370 W Pleasantview Ave Ste 2-120  
Hackensack, NJ 07601-8004  
*Applicant*

/s/ \_\_\_\_\_  
Adam S. Weiss  
Tedd W. Van Buskirk  
Polsinelli PC  
161 N. Clark Street, Suite 4200  
Chicago, IL 60601-3316  
T: (312) 873-3644

EXHIBIT 2

page 1 of 3



November 6, 2014

Jura C. Zibas  
212.915.5756 (direct)  
Jura.Zibas@wilsonelser.com

Via Federal Express

Godswill Oletu  
370 W Pleasantview Avenue,  
STE 2-120  
Hackensack, New Jersey 07601-8004

Re: Zenith-Mart, Inc. —

Dear Godswill Oletu:

We are intellectual property counsel to Zenith-Mart, Inc. (hereinafter referred to "Zenith-Mart").

We take this opportunity to advise you that, from the date you receive this letter, until this controversy with Zenith-Mart is resolved, any and all records of any sort, nature or kind whatsoever with regard to any infringing activity which infringe the rights of Zenith-Mart, must be scrupulously maintained and not spoiled, deleted or disposed of in any manner whatsoever. The law exacts severe penalties for such spoliation of evidence.

Zenith-Mart is an online retailer founded in April 2012 by Mr. Tochukwu Mbiannoze ("Mbiannoze"). Mbiannoze has invested a vast amount of time and money developing Zenith-Mart into a premier online retail store. Zenith-Mart has a well-known reputation for offering high quality consumer goods such as electronics, appliances and jewelry.

It has come to our client's attention that you are the owner of the domain, www.zenithmart.com (hereinafter referred to the "domain") since December 17, 2006. The domain was parked for seven ("7") years meaning that the domain was registered and was not used in commerce prior to having correspondence with our client in August and September 2013. In response to your demand to be paid for a website purchased merely for the purpose of re-selling at the highest price, our client presented a reasonable offer for the rights of the domain and was even willing to give you 20% equity in his company in exchange for the domain (See Exhibit A). You rejected this extremely generous offer and demanded 50% of his company in exchange for the rights to the domain. Rightfully so, our client refused. After these negotiations ended, you launched an e-commerce website intentionally replicating our client's company, Zenith-Mart.

Furthermore, you filed two trademark registrations for ZENITHMART on September 18,

150 East 42nd Street • New York, NY 10017 • p 212.490.3000 • f 212.490.3038

Albany • Baltimore • Boston • Chicago • Cincinnati • Dallas • Denver • Golden City • Houston • Las Vegas • London • Los Angeles • Louisville • Madison  
Miami • Milwaukee • New York • New York • Orlando • Philadelphia • San Diego • San Francisco • Washington, DC • West Palm Beach • White Plains  
Atlanta • Berlin • Cologne • Frankfurt • Munich • Paris

wilsonelser.com

6422179v.1



2013 and March 21, 2014 with the United States Patent and Trademark Office ("USPTO"). (September 18, 2013 was the exact day that the negotiations ended between our client and yourself.) In the trademark applications (serial nos. 86067598 and 86228203), it was stated that the mark was first used and first used in commerce in 2008 (See Exhibit B). Under 15 U.S.C. § 1127, "use in commerce" is defined as

"...the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For the purpose of this Act, a mark shall be deemed to be in use in commerce –

(1) On goods when- ...

(A) It is placed in any manner on the goods..., and

(B) The goods are sold or transported in commerce."

Here, there is no evidence of such use. The specimens provided to the USPTO did not demonstrate the mark being used in commerce dating back to 2008. However, there is substantial evidence that would support a finding of fraud. By knowingly misrepresenting the date of your first use in commerce of a mark, you have committed fraud. You have full knowledge that you did not use the mark in commerce until you launched your website after September 2013. Moreover, you were fully aware that our client was using the mark ZENITHMART in commerce prior to registering your mark, but you filed the trademark application anyway immediately after negotiations broke down.

In addition, you had clear intent to deceive the United State Patent and Trademark Office. Throughout the trademark prosecution process, you lied and deceived the Examining Attorney into believing your statements and documents were genuine. We have additional evidence that you forged shipping labels and sale receipts to falsely claim affiliation with eBay. If you recall, you signed the declaration prior to filing stating that the undersigned has been "warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001..." If necessary, we are prepared to pursue justice to the fullest extent.

The evidence is clear and convincing that our client was the first user of ZENITHMART in commerce. Additional evidence proves that Mbiannoze was the first to sign-up for the Amazon store using the ZENITHMART mark and that your ZENITHMART logo was not added to the profile page of your eBay personal seller account (OGODSWILL) until 2014 even though you have been a member of eBay since 2002. Therefore, all the evidence points to deception and fraud committed by you towards consumers and to the USPTO.

On behalf of our client, we demand that you immediately advise us in writing that you will immediately withdraw your trademark applications for ZENITHMART and transfer the domain, [www.zenithmart.com](http://www.zenithmart.com) to Zenith-Mart. You must cease and desist using the word, ZENITHMART in any future endeavors. Additionally, demand is made upon you to promptly supply us with your sale figures dating back to September 18, 2013 in order to account for our client's lost profits.

We also require that you immediately provide us with COPIES OF ALL DOCUMENTS which refer or relate to the foregoing requests, with a view toward your accounting to our client that you agree to immediately and permanently cease any further sales on your website,



[www.zenithmart.com](http://www.zenithmart.com).

You are hereby advised that if we do not promptly receive a substantive response advising that you will withdraw the trademark applications and transfer the rights of the domain to Zenith-Mart, and will provide us with the information and materials noted above, we have been instructed and are fully prepared to take further steps as necessary to protect our client's rights including filing a lawsuit claiming that you committed fraud on the USPTO.

We look forward to an immediate response by November 17, 2014 from either you or your counsel.

Very truly yours,

Wilson Elser Moskowitz Edelman & Dicker LLP

  
Jura C. Zibas  
Robert P. Feinland

cc: Amazon Legal Department via regular mail  
eBay Legal Department via regular mail

November 24, 2014.

Wilson Elser  
150 East 42nd Street  
New York NY 10017

Re: Zenith-Mart, Inc

ATTN: Jura Zibas, Esq.

This is to acknowledge the receipt of your letter on the above subject matter, dated November 6, 2014.

Please note that, I deny all the salient allegations raised in your letter and on the contrary; it is your client that is infringing on my Trademark rights.

Your letter made boldface and swiping allegations without any evidence or prove in a bid to further the continual and incessant intimidation, bullying and harassment by your client. Your client started this pattern through Polsinelli before eventually filing his current Opposition No. 91216725 before TTAB. As noted in TTAB Board order of August 15, 2014 (herein attached); this case is merely about priority and non-use as it relates to my declaration of first use date of (or before) 2008 in my Application for registration before USPTO.

I demand that, you provide immediately, evidence that supports the sweeping unsupported allegations contained in your letter dated 11/06/2014.

These are the irrefutable facts in this case:

1. My first use date for the mark 'ZENITHMART' in US interstate commerce occurred on December 20, 2006 in a shipment to a customer in Syracuse, NY. From your letter, it is apparent that you are in custody of the receipt for this order number#35804 containing the details and for emphases, I am enclosing that receipt here under again, plus additional receipt for 2007 sale.
2. Just like in my initial disclosure to Posinelli in the TTAB case, I am hereby also putting you on notice that, I will be relying on this receipt to establish my priority and as such, no information on the receipt was redacted; this way, you can do your due diligence. These dates are earlier and superior to the date contained in my declaration and are earlier and superior to any date your client can rely upon for priority.
3. I have continued to use this mark in US interstate commerce since my trademark filing date of September 18, 2013 to date.
4. Your client alleges a first use in commerce date of Oct 21, 2012 and has not provided any evidence to support that. Even if he were to provide any supporting evidence, that makes your client a junior user and a late filer of an unregistered trademark. As the 2008 contained in my declaration or the 2006 that I can prove with receipts is a superior date.

5. My domain was used for US interstate commerce before my communication with your client, the content of my email correspondent with your client that you have custody of, bears that fact out.
6. I did not approach your client to sell any domain name, you deliberately misconstrued the content of the email exchange to fit your narratives. Your client sent me multiple unsolicited emails, begging to buy the domain name; my first response to him contain comments like, "I am not kin in selling the domain name" and that "I have used the domain name in ecommerce in the past and also planned on re-commercializing it again. The only thing I agreed on was a partnership, which was in line with my objectives to re-commercialize the domain name.
7. As at September, 2013. Your client had merely registered a company the prior year (which does not qualify as use in commerce for Trademark registration purposes), he did not have any asset, he was still seeking small business loan for his new startup, he does not have any web presence, he was not selling any product; so your assertion that I demand 50% of his company miss-state the circumstances, I was merely asking for a partnership in a new startup and I was generous enough to let go 50% stake I have in my business that I first commercialized in 2006; 6 years before he registered his business name.
8. As at September 18, 2013 when I filed my trademark application, your client has not executed his business plans, he was still seeking funding for his business.
9. As at September 18, 2013; when I filed my trademark, your client does not have any functioning website acting as source origination for his alleged ecommerce use of the disputed mark. The two websites [www.zenithmart.us](http://www.zenithmart.us) and [www.zenith-mart.com](http://www.zenith-mart.com) that he alleges to own were parked and not functioning.
10. Your client's current website did not launch until well into 2014; more than three months after my filing date.
11. When your client filed his Applications in January, 2014; he did this; knowing that I have priority and also that I have a pending Application on the mark.
12. In addition to the fact that, no fraud was committed; you have to contend with the standard for proving fraud as decided in *Bose Corp., 2009 U.S App. LEXIS 19658 (Fed. Cir. Aug. 31, 2009)*, which is clear and convincing evidencing. All that the Attorney your litigation will force me to retain had to do in a Summary Judgment or Declaratory Judgment filing is to present the same evidence that you currently have; which clearly shows my use of the mark in US interstate commerce in 2006. Which clearly showed that I did not deceive the USPTO office but even erred on the side of caution by starting a later date of 2008 as first use date.
13. Contrary to the representation in your letter; the specimen for a use-base trademark filing does not need to "demonstrate the mark being used in commerce dating back to..." date of alleged first use. All that is needed is a demonstration of current use and a declaration stating date of previous use that meets the criteria of "At least as early as." in respect to first use "Anywhere" and first use "in commerce".

In as much as I am not obligated to proffer the above details or send you any evidence or prove anything to you, since you have the burden of prove beyond a reasonable doubt or with clear and convincing evidence. My sole purpose for proffering the above, is to further and continue to put your client on notice about this frivolous matter and if he chooses to file a case in Court, I will be forced to retain an Attorney to represent my rights and your client will be responsible for my Attorney fees and damages. I am not naive to assumed that, these information will not be view by you with skepticism and it is well understood that you are and will be biased towards your client and are not an impartial arbitrator of the facts. My goal is not to convince you, as stated above, it is merely to put your client on notice.

Your client have been given ample and multiple notices to cease and desist from infringing on my trademark rights. The first notice was sent to Polsinelli in March 21, 2014 in reply to a threat letter just like yours from Polsinelli and subsequent notices were also sent to Polsinelli as well. He also now have sales receipt dating back to 2006, proving my superior priority date and usage before he adopted his mark. On the other hand, your client has not provided any evidence attesting to his claimed superior right and first use date, but still continued in his willful infringement activities, threats, intimidations, bullying and harassments. These will form the bases of my counterclaims and request for compensation and damages, should this be litigated in the court.

Note that, I will not withdraw any of my trademark applications currently before the USPTO, as I have a superior priority date of first in US interstate commerce of 2006, which is earlier than the 2008 indicated in my USPTO applications and you have that irrefutable evidence before you, despite your personal opinions that are biased towards your client.

Wherefore, I demand that your client cease and desist effective immediately, all and any use of the mark ZENITHMART and other similarly related mark(s) on printed media, accessories, advertisement, online, blogs, social media, signage, electronic systems, etc.


I also demand that, your client hand over; all domain names, blog IDs, social media IDs, etc that uses the mark ZENITHMART and other similarly related mark(s).

Note, that I will not allow myself to be bullied by your client or by his many Attorney representations. If your client feel strongly about his fraud allegations, he can choose to amend his TTAB's opposition to plead fraud with particularity, this will avoid costly and baseless litigations in the court. Alternatively, he also have the right to suspend his TTAB opposition and litigate this through the court system and as stated above, I will forcefully defend my rights and file counterclaims against him to the fullest extent of the law.

Also, note that once your client filed any case in Court, the window for dialogue would have been closed as there will be no incentive for me and any settlement to prevent a trial must include payment for my Attorney fees and other fees, damages or monetary compensations that my Attorney(s) in their view would be deem appropriate to effect a settlement.

Further note that; I reserve all rights to vigorously protect my Trademark and Intellectual property rights.

Sincerely,



11/24/14

Godswill Oletu  
370 W. Pleasantview Avenue, STE#2-120  
Hackensack NJ 07601.



EXHIBIT 4

page 1 of 2

**Godswill Oletu**

**From:** "Tochukwu Mbiannoze" <tochukwumbiamnoze@gmail.com>  
**Date:** Friday, January 23, 2015 7:34 PM  
**To:** "Godswill Oletu" <oletu@oletu.com>  
**Cc:** <jura.zibas@wilsonelser.com>  
**Subject:** Re: important

Hello Oletu,

I kind of like your courage in this trademark case. so you think anything in this world will let you fraudulently steal my Zenith-Mart Inc mark? The Word of God said touch not my anointed and do my prophet no harm so your fighting to take what does not belongs to you will be futile because whatever is mines is Gods own. because I refuse to accept your greed of requesting 50% of my Zenith-mart Inc, you went behind me to apply for my trademark knowing too well its my mark and I have been using it before you consistently in commerce. you lied and keep deceiving the USPTO into believing your lies and deception. You keep falsifying and forging documents, forging paypal slips, URL's and shipping labels and showing your ebay personal account with ID ogodswill as zenithmart which you recently in 2014 changed your personal ebay profile photo to the zenithmart logo thinking you will get away with that? think again because my lawyers have every proves of your committing fraud in this case. You keep forging paper works and committing perjury and you forget you consented to produce valid documentation and make honest and truthful claims. I saw your discovery and you think I don't have everything you requested? I have all of them and once my new attorneys are ready and putting everything together, you will regret ever infringing on my trademark, deceiving my customers into believing Zenith-Mart Inc owns your domain [www.zenithmart.com](http://www.zenithmart.com) or operates it. You will account for every and all my lost profits and for damages you caused Zenith-Mart Inc. This is why alot of people advised me to stay away from Nigerians here in America that you guys are crooked and back stabbers but I thought I could give you a chance and trust you but you are just like others, very deceitful and this time you cannot deceive the USPTO because by the end of the trial, you will wish you never started it in the first place. Why did you want to sell the domain to me? why did you request 50% equity of Zenith-Mart Inc and because I rejected went behind to apply for my trademark. What if I had applied for the trademark long ago and had registered the trademark before contacting you to sell the domain to me? you stated you were using [www.zenithmart.com](http://www.zenithmart.com) consistently since 2008 till date when since 2007 [www.zenithmart.com](http://www.zenithmart.com) was parked and not in existence or in commerce till early 2014 after your first and second office action denial by the USPTO examining attorney and you hurriedly rushed and opened amazon affiliate commission account with the domain to deceive the examining attorney forgetting I have been an Amazon Merchant retailer long before you and also traded on Ebay with the name and ID zenithmart with proves you will see soonest. why didn't ebay give you the account id zenithmart instead you started using zenithmart devices and fashions. you even submitted fraudulent URL's <https://zenithmart.secure2u.com/checkout/35804/complete.html> on your initial disclosure and that is perjury my friend and you falsifying shipping labels and slips from payment copying and pasting zenithmart on the slips to deceive the USPTO that you have been using zenithmart to sell and ship items for a long time when that was all false. You don't even own the items you sell on your personal ebay but relying on affiliate commission from sales and so the items on [www.zenithmart.com](http://www.zenithmart.com) are owned by amazon and you are only earning peanut commission when I offered you 20% equity out of my generosity and big heart but that was not enough for you and you now think you can steal my mark. I saw all your disclosure and every forged documents you presented and that proves you have nothing and a failure in this case. Am not asking you to withdraw but know it that at the end of this case you will be facing perjury and trademark infringement and will pay for every damage you have caused Zenith-Mart Inc. You validly claimed that your zenithmart is a sole proprietorship and registered under Oletu Systems LLC which was false because your zenithmart is not affiliated with Oletu Systems LLC nor is it

3/12/2015

EXHIBIT 5

page 2 of 2  
Page 2 of 2

on any Oletu system LLC legal registration documents. another perjury. Go back and review everything you have been feeding the USPTO all lies and its going to catch up with you

You will be hearing from my new attorneys though I know they contacted you before in December 2014. Let see what the new year has in store. All the best in your falsifying documents.

Tochukwu

Copied to

Jura C. Zibas - Zenith-Mart Inc Attorney

3/12/2015

EXHIBIT 5 page 1 of 2

**Godswill Oletu**

---

**From:** "Godswill Oletu" <oletu@oletu.com>  
**Date:** Saturday, January 24, 2015 2:40 PM  
**To:** "Tochukwu Mbiannoze" <tochukwumbiamnozie@gmail.com>  
**Cc:** <jura.zibas@wilsonelser.com>  
**Attach:** ttavvue-91216725-OPP-8-c.pdf  
**Subject:** Re: important

Hi Tochukwu,

Ordinarily, I would not have replied or responded to this caustic and accusatory email.

But against my better judgment, I will be responding and No!, it will not be full of venom and name calling like yours, I will take the high road!

By the way, you do not have a monopoly on God and no one is stealing from you. If you first remove the plank in your own eyes, you will notice that you are the one encroaching on my trademark rights and attempting to steal what does not belong to you, and you wonder, why I am not rolling over for you to take it? It does not make any difference, if you were the one that first registered the trademark, all you would have gotten by that, would have been a constructive use date, which will still be inferior to my priority date and I would have still prevailed at the end of the day.

I am glad you received the discoveries that I sent, because while discussing with your current TTAB Attorney, Adam Weiss on 1/21/2015; who had filed to withdraw from representing you, due to non-payment of Attorney fees(see attached) , I was concerned about the chain of custody, regarding the discovery requests. Your email and my reply herein, confirms that you have received them. I was even very generous to you, I had to consent to extension and reset of the remaining times.

Unlike you, I have many great Nigerian friends in the US; who are leaders of industries, lawyers, business owners, professionals, fathers, mothers, etc; who are bringing honor to the Nigeria name abroad; they are not crooks or back-stabbers, they are honest and law abiding individuals just like myself. Your experience must have been informed by the clique you keep and the characters you attract, try making some changes and you might start having a different experience. It is very sad to run away from your kinsmen and your kind in a foreign country, I will not wish that on my worst enemy. And believe me, I do not care about your company, your 20% offer and I am not in need and such does not require your pity or assistance, I am doing fine and I thank God for that. You don't pay my mortgage nor any of my bills and I did not approach you or ask you for any favor or benevolent, so stop deceiving yourself and take your 'generosity' and 'big heart' elsewhere.

And please, try to contact your previous Attorney and settle your debt with them. Actions like yours, give Nigerians a bad name and make it near impossible for many people here to deal with Nigerians on a level playing field, without been suspicious if they will hold their end of the bargain. Such encounters like yours, gives credence to the negative stereotype they see on TV and printed media on a persistent bases. It is our duty to reverse that negative tide and not to promote or give them folder to *strive*. Imagine how your previous Attorneys will treat the next Nigerian(s) who approached them for services? All because, you spoilt it for every other Nigerian after you, and despite our current

3/12/2015

controversy, you will agree that it is not fair to the Nigerian image abroad.

I must warn you and also put you on notice here that; you are treading on the border of slander and libel, as evidenced in your email below and if you think I am not going to fight back and do so vehemently to remedy my integrities and trademarks rights and make you pay, then you have something else coming. When this is all over, you will be the one paying dearly for infringing on my trademark rights.

Regarding the other self-serving opinions raised in your email below, they are without merit and as such, I will not be responding to them.

Finally, like in my response to the letter sent by your current Attorney (copied above); If you have any evidence of fraud in my Application before the USPTO; please be my guest and bring them up through the proper channels, and I will met your case at the appropriate forum. I certainly will not litigate this matter through letters and definitely not through emails, met me at the appropriate forum and we can take the matter from there and allow an independent arbitrator of the facts to adjudicate on the merits of the case and not self serving innuendos.

Good luck and God bless.

Godswill Oletu

**From:** Tochukwu Mbiannoze  
**Sent:** Friday, January 23, 2015 7:34 PM  
**To:** Godswill Oletu  
**Cc:** [jura.zibas@wilsonelser.com](mailto:jura.zibas@wilsonelser.com)  
**Subject:** Re: important

Hello Oletu,

I kind of like your courage in this trademark case. so you think anything in this world will let you fraudulently steal my Zenith-Mart Inc mark? The Word of God said touch not my anointed and do my prophet no harm so your fighting to take what does not belongs to you will be futile because whatever is mines is Gods own. because I refuse to accept your greed of requesting 50% of my Zenith-mart Inc, you went behind me to apply for my trademark knowing too well its my mark and I have been using it before you consistently in commerce. you lied and keep deceiving the USPTO into believing your lies and deception. You keep falsifying and forging documents, forging paypal slips, URL's and shipping labels and showing your ebay personal account with ID ogodswill as zenithmart which you recently in 2014 changed your personal ebay profile photo to the zenithmart logo thinking you will get away with that? think again because my lawyers have every proves of your committing fraud in this case. You keep forging paper works and committing perjury and you forget you consented to produce valid documentation and make honest and truthful claims. I saw your discovery and you think I don't have everything you requested? I have all of them and once my new attorneys are ready and putting everything together, you will regret ever infringing on my trademark, deceiving my customers into believing Zenith-Mart Inc owns your domain [www.zenithmart.com](http://www.zenithmart.com) or operates it. You will account for